IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.385 OF 2007

Dattatraya Shamrao Pawar ...Appellant

vs.

The Pune Municipal Commissioner ...Respondent

Mr.T.D.Deshmukh for the Appellant

CORAM: A.S.OKA,J.
DATE : DECEMBER 11,2007.

P.C.:

1. Heard learned Advocate for the Appellant. The Appellant is the unsuccessful plaintiff.

2. The case of the Appellant-plaintiff is that his original house was washed away in Panshet flood in the year 1962 and thereafter, he constructed a shed consisting of two rooms. His case is that for a period of last more than 35 years the shed is in existence. A notice dated 11th May 1987 was issued by the Respondent-Corporation to the Appellant alleging that the shed was unauthorised and the same is required to be pulled down. The Appellant filed a suit for challenging the said notice which has been dismissed by the trial court and the decree of the trial court has been confirmed in the Appeal.

3. The learned Advocate for the Appellant submitted that the

notice was issued without following the principles of natural justice. He submitted that while issuing the notice, the Respondent has not followed the guidelines laid down by this Court in the decision in case of Sopan Maruti Thopate Vs. Pune Municipal Corporation and another [1996 (1) Mh.L.J. page 963]. He, therefore, submitted that the action of issuing notice dated 11th May 1987 is completely illegal and therefore, the courts below ought to have protected the suit shed.

4. I have considered the submissions. In paragraph 11 of the judgment, the Appellate Court has observed that the first witness examined by the Appellant-plaintiff admitted that before constructing the shed, the Appellant-plaintiff had not obtained a permission of the Respondent-Corporation. Thus, the Appellate Court observed that it is an admitted position that the suit shed has been unauthorizedly constructed. The Appellate Court also observed that the Appellant-plaintiff has not even produced the notice dated 11th May 1987 to show that it was issued in exercise of power under section 260 of the Bombay Provincial Municipal Corporation Act, 1949. A submission was made by the learned Advocate for the Appellant that even the Respondent-Corporation failed to prove a copy of the said notice.

5. It was the Appellant who had approached the court for

seeking relief on the basis of the said notice and it was for him to produce the said notice to show that section 260 of the said Act of 1949 was sought to be invoked in breach of the guidelines issued by this court in case of Sopan Chaudhari (supra).

6. Considering the fact that the suit shed was erected without obtaining permission of the Respondent-Corporation, the courts below were justified in declining to grant discretionary relief of declaration and injunction. It is well settled principle of law that the relief of declaration and injunction under the Specific Relief Act,1963 is always discretionary and is governed by equitable considerations. Therefore, once it is found that the suit shed was constructed without obtaining permission, no fault can be found with exercise of discretion by the courts below. No substantial question of law arises. Second Appeal is accordingly dismissed.

7. As it is the case of the Appellant that he is the flood affected person and that the suit shed was constructed by him for his residence in the year 1962, if action of demolition is not carried out till today, the same shall not be carried out for a period of four months from today subject to condition that the Appellant will maintain status quo as of today in respect of the suit shed. Within the said period of four

months, it will be open for the Appellant to apply for regularization of the suit shed.

JUDGE